

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

60734

FILE: B-185660

DATE: April 8, 1976

MATTER OF: Ecodyne Cooling Products Division

99088

DIGEST:

1. Protest alleging restrictive specification requirements is untimely where basis for protest was apparent from invitation for bids but protest was not filed until after bid opening.
2. Protester's allegation that it was misled into believing that bid opening would be postponed to allow for rewrite of specifications is not supported by protester's own documents, from which it appears that protester anticipated bids would be opened at scheduled time.

On behalf of the Energy Research and Development Administration (ERDA) under prime contract No. W-7405-ENG-26, Union Carbide Corporation, Nuclear Division (Carbide) issued an invitation for bids on October 30, 1975, for cooling towers for the Paducah Gaseous Diffusion Plant. The IFB was amended for specification changes on several occasions and the bid opening date was extended from November 25, 1975, to December 10, 1975.

On December 30, 1975, Ecodyne Cooling Products Division (Ecodyne) filed a protest in our Office alleging defects in the specification requirements. Ecodyne claims that the specification requirements were unduly restrictive and infringed on "tested engineering principles." Moreover, Ecodyne claims that it was led to believe that the specifications would be rewritten and that the scheduled bid opening date would be postponed to permit specification revision. For the reasons stated herein, the protest is untimely and will not be considered on the merits.

Section 20.2 of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), provides in part:

"(b)(1) Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals.

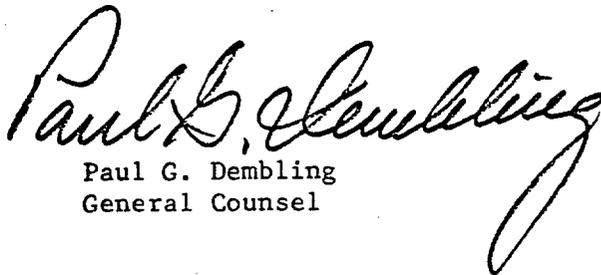
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"(2) In cases other than those covered in subparagraph (1) bid protests shall be filed not later than 10 days after the basis for protest is known or should have been known, whichever is earlier."

In the instant case, the protested specification requirements were apparent prior to bid opening. In fact, by telex of November 13, 1975, Ecodyne advised Carbide that it would not bid due to restrictive specifications. This telex was withdrawn by a telex dated November 18 in which Ecodyne expressed satisfaction with the modified specifications. On December 5, Ecodyne again indicated that it would not bid on the solicitation and on December 8 wrote to Carbide for the purpose of suggesting guidelines for future procurements. Despite these communications regarding the specification requirements, Ecodyne did not file a protest prior to the December 10 bid opening. Consequently, its protest concerning the contents of the specifications is untimely under section 20.2(b)(1) of our Bid Protest Procedures.

As to the failure of Carbide to delay bid opening in order to rewrite the specifications, Ecodyne's own documents, copies of which were furnished to us by ERDA, do not reflect that Ecodyne was misled into believing that Carbide would take any such action. Ecodyne's telex message of December 5 stated only that "should you decide to extend the bid date and review the specifications, we would welcome the opportunity to review our position /not to bid/." Ecodyne's letter of December 8 made no mention of a postponement of the bid opening date and referred only to "future transactions of this nature." It therefore appears that Ecodyne did anticipate that bids would be opened at the scheduled time. Accordingly, we find no basis for considering this allegation further.

In view of the above, we are closing our file on this matter.


Paul G. Dembling
General Counsel